

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE	:	CHAPTER 11
<b>MOUNTAIN PHOENIX, LLC,</b>	:	CASE NO. <b>20-71358-JWC</b>
Debtor and Debtor-in-Possession.	:	
<hr/> <b>BMW BANK OF NORTH AMERICA,</b>	:	<hr/>
Movant,	:	
v.	:	CONTESTED MATTER
<b>MOUNTAIN PHOENIX, LLC, Debtor</b>	:	
<b>and Debtor-in-Possession,</b>	:	
Respondent.	:	
	:	
	:	

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

NOW COMES BMW BANK OF NORTH AMERICA (the "Movant") and moves this Court for relief from the automatic stay and shows the Court as follows:

1.

On November 3, 2020, Mountain Phoenix, LLC ("Debtor") filed a Voluntary Petition pursuant to 11 U.S.C. Chapter 11, and said case is pending before this Court.

2.

Movant has a claim in this case secured by a first priority lien against Debtor's vehicle, to wit: 2016 Land Rover Range Rover Supercharged VIN SALGS2VF4GA282738 (the "Collateral"). The approximate principal balance is \$80,693.67 as of November 19, 2020, with a delinquency on the loan secured thereby of \$26,832.80. The prepetition delinquency is \$25,171.75 and the postpetition delinquency is \$1,661.05. The loan is due postpetition for the November 6, 2020, payment. Monthly payments are \$1,661.05. The NADA retail value of the

Collateral is \$44,750.00, and Movant has no other collateral securing this loan.

3.

Debtor does not have equity in the Collateral and the Collateral is not necessary to a reorganization that is in prospect.

3.

Cause exists including the lack of adequate protection to grant Movant relief from the automatic stay so as to authorize Movant to recover and dispose of the Collateral. Movant requests the right to file an amended proof of claim after liquidation of the Collateral.

4.

Movant requests that Bankruptcy Rule 4001(a)(3) be waived.

5.

Movant has no proof of full coverage insurance protecting its interest in the Collateral.

7.

Debtor is a corporate entity that must have counsel to appear before this court. - National Independent Theatre Exhibitors, Inc. V. Buena Vista Distribution Company, 748 F.2d 602, 609 (11<sup>th</sup> Cir. 1984); Palazzo v. Gulf Oil Corporation, 764 F.2d 1381, 1385 (11<sup>th</sup> Cir. 1985). A Georgia limited liability company is a corporation that does require separate representation. Winzer v. EHCA Dunwoody, LLC, 277 Ga. App. 710, 713-14, 627 S.E.2d 46 (2006).

WHEREFORE, Movant prays that this Court:

- (a) Hold a hearing pursuant to this Motion within thirty (30) days as is required under 11 U.S.C. Section 362(e);
- (b) Grant Movant relief from the automatic stay under 11 U.S.C. Section 362(d) so as to allow Movant to recover and dispose of the Collateral and to apply the net proceeds generated therefrom to its claim in this case, and if the disposition results in a deficiency, amend its claim filed in this case, subject to objection;
- (c) Rule 4001(a)(3) be waived; and

(d) Grant such other and further relief as the Court deems to be just and proper.

This November 19, 2020.

The Law Office of  
LEFKOFF, RUBIN, GLEASON & RUSSO, P.C.  
Attorneys for Movant

By: /s/Craig B. Lefkoff  
Craig B. Lefkoff  
Georgia State Bar No. 445045

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Respondent.	:	
	:	
	:	
	:	

**CERTIFICATE OF SERVICE**

The undersigned, Craig B. Lefkoff, hereby certifies that I am, and at all times hereinafter mentioned, was more than 18 years of age, and that I served the MOTION FOR RELIEF FROM AUTOMATIC STAY and NOTICE OF HEARING on the following parties 1) electronically, if allowed by and pursuant to the requirements of local rule, or 2) by depositing same in the United States Mail in properly addressed envelope(s) with adequate postage to all others, as follows:

Mountain Phoenix, LLC  
Suite 150  
4345 Int'l Pkwy  
Atlanta, GA 30354

Thomas Wayne Dworschak  
Office of the U.S. Trustee  
362 Richard Russell Federal Building  
75 Ted Turner Drive, SW  
Atlanta, Georgia 30303

This November 19, 2020.

The Law Office of  
LEFKOFF, RUBIN, GLEASON & RUSSO, P.C.  
Attorneys for Movant

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	:	

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that **BMW Bank of North America** has filed a Motion for Relief from Automatic Stay and related papers with the Court seeking an order of relief from the Automatic Stay.

**PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion for Relief from Automatic Stay, in Courtroom 1203, The Richard B. Russell Federal Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303 at 10:00 a.m. on December 3, 2020.**

Given the current public health crisis, hearings may be telephonic only. Please check the “Important Information Regarding Court Operations During COVID-19 Outbreak” tab at the top of the GANB Website (<http://www.ganb.uscourts.gov/>) prior to the hearing for instructions on whether to appear in person or by phone.

Your rights may be affected by the Court’s ruling on these pleadings. You should read these pleadings carefully and discuss with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings, or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the

pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address for the Clerk's Office is: Clerk, United States Bankruptcy Court, Room 1340, U.S. Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

IF THE MOTION IS FOR RELIEF FROM STAY, and a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consent to the automatic stay remaining in effect until the Court orders otherwise.

Dated: November 19, 2020

Signature: /s/Craig B. Lefkoff

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